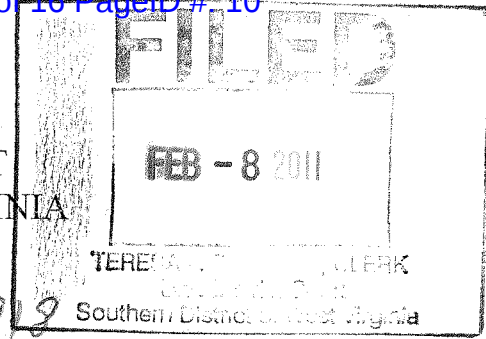


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA



SALVATORE LoBello

34718

Plaintiff

(Enter above the full name of the plaintiff
or plaintiffs in this action).

(Inmate Reg. # of each Plaintiff)

VERSUS

CIVIL ACTION NO. 2:11-cv-0085
(Number to be assigned by Court)

SGT. NATE KENDRICK

CPL. DAVE MILLER

Individual Capacity

(Enter above the full name of the defendant
or defendants in this action)

COMPLAINT

I. Previous Lawsuits

- A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment?

Yes _____

No X

B. If your answer to A is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline).

1. Parties to this previous lawsuit:

Plaintiffs: NIA

Defendants: NIA

2. Court (if federal court, name the district; if state court, name the county);

NIA

3. Docket Number: NIA

4. Name of judge to whom case was assigned:

NIA

5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)

NIA

6. Approximate date of filing lawsuit: NIA

7. Approximate date of disposition: NIA

II. Place of Present Confinement: MT Olive Corr. Complex

A. Is there a prisoner grievance procedure in this institution?

Yes X No _____

B. Did you present the facts relating to your complaint in the state prisoner grievance procedure?

Yes X No _____

C. If you answer is YES:

1. What steps did you take? Unit Managers, Wardens
to Commissioner

2. What was the result? Grievance denied
at all levels.

D. If your answer is NO, explain why not: _____

III. Parties

(In item A below, place your name and inmate registration number in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.)

A. Name of Plaintiff: Salvatore LoBello

Address: 1 Mountainside Way MT. Olive 25145

B. Additional Plaintiff(s) and Address(es): _____

N/A

(In item C below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item D for the names, positions, and places of employment of any additional defendants.)

C. Defendant: Sgt. Nate Kendrick
is employed as: Sgt.
at MT. Olive Corr. Complex.

D. Additional defendants: Cpl. Dave Miller
is employed as Cpl. at MT. Olive
Corr. Complex.

IV. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

See Attached Exhibit

IV. Statement of Claim (continued):

Same

V. Relief

State briefly exactly what you want the court to do for you. Make no legal arguments.
Cite no cases or statutes.

See attached Exhibit

V. Relief (continued):

Same

VII. Counsel

- A. If someone other than a lawyer is assisting you in preparing this case, state the person's name:

Salvatore LoBello

- B. Have you made any effort to contact a private lawyer to determine if he or she would represent you in this civil action?

Yes ☒ No ☐

If so, state the name(s) and address(es) of each lawyer contacted:

Philip Lacaria

80 McDowell ST. Welch, W.V. 24801

If not, state your reasons: N/A

- C. Have you previously had a lawyer representing you in a civil action in this court?

Yes ☐ No ☒

If so, state the lawyer's name and address:

N/A

Signed this 1 day of February, 2011.

Salvatore Iobello

Signature of Plaintiff or Plaintiffs

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 2/1/11
(Date)

Salvatore Iobello

Signature of Movant/Plaintiff

Signature of Attorney
(if any)

Statement of facts

- 1- On June 12, 2009 Plaintiff Salvatore LoBello D.O.C. 34718 was housed in cell 611 on pod 6 of the Q-2 Segregation unit at MT. Olive Correctional Complex in MT. Olive, W.V. 25185.
- 2- On June 12, 2009 defendant Ex-Corporal Donna Braenovich, who's now deceased, was employed as a Correctional Officer-Corporal on pod 6 of Q-2 Segregation Unit at MT. Olive Correctional Complex in MT. Olive, W.V. 25185.
- 3- On June 12, 2009 defendant Corporal David Miller was employed as Correctional Officer II on pod 6 of Q-2 Segregation Unit at MT. Olive Correctional Complex in MT. Olive, W.V. 25185.
- 4- On June 12, 2009 defendant Sgt. Nate Kendrick was employed as Correctional Officer-Corporal on Q-2 pod 6 Segregation Unit at MT. Olive Correctional Complex in MT. Olive, W.V. 25185.
- 5- On June 12, 2009, after plaintiff being maced and having words with defendant Ex-Braenovich, Plaintiff flooded his cell by flooding his toilet.

- 6- Approx. after 15-30 minutes of plaintiff flooding his toilet, defendants Miller, Kendrick and Ex-Braenovich, entered pod 6 on A-2 and proceeded to cell 611 to see why plaintiff flooded.
- 7- Defendant Miller then turned plaintiff's water off from outside the plaintiff's cell, and stated to plaintiff "You want to swim in shit water, now we're gonna go swimming!",
- 8- Then shift commander Steve Caudill (Capt.) came to plaintiff's door to see what his problem was, and defendant Kendrick told plaintiff to strip out so plaintiff can be searched for contraband.
- 9- Plaintiff stated "Is the camcorder out there?" Capt. Caudill stated "There's no camera out here you fat fucking retard!" Plaintiff exchanged words with Capt. Caudill and Capt. stated "Cuff up bitch + we'll see how tough you are".

- 10- Plaintiff handed defendant Kendrick all his clothes for contraband search. Defendant Kendrick then asked plaintiff for his shoes leaving plaintiff bare foot in socks and defendant ex-Braenovich threw plaintiff's shoes over the rail behind her.
- 11- Defendant Kendrick then gave plaintiff a directive to turn around and "cuff" up from behind due to plaintiff's prior problem with defendant ex-Braenovich. Then stated to plaintiff "Step out backward and place your left shoulder on the wall to the left side of your cell".
- 12- The door opened, plaintiff complied with defendant Kendrick's verbal command.
- 13- Plaintiff had his left shoulder on the wall when defendant Miller directed plaintiff to take two steps backward while plaintiff's shoulder remains on the wall and plaintiff remained handcuffed behind his back. Plaintiff complied and defendant Miller placed one shackle on plaintiff and with the shackle chain he pulled plaintiff's feet out from

underneath him, causing plaintiff to fall face flat on the floor and injure his nose and jaw area.

14 While plaintiff was on the floor, defendants Miller, Kendrick and ex-Degenovich started to kick and punch plaintiff in head and body area all the way down the top tier.

15 On the way out of pod 6, defendants Miller and Kendrick grabbed plaintiff by the back of his head and slammed plaintiff's forehead into pod 6's steel door frame causing cut to plaintiff's left side of lower forehead requiring 4 sutures and leaving permanent scar.

16 On the way over to the "multi-purpose room", where the plaintiff would be evaluated by medical staff, defendant Kendrick again slammed plaintiff's right side of his face into door frame and caused plaintiff's eye to swell shut, and a cut requiring 1 suture to corner of plaintiff's right eye.

- 17- As the plaintiff was going through the "multi-purpose room", defendant Kendrick, again slammed plaintiff's head into metal file cabinet.
- 18- Once plaintiff got to the back of the "Multi" plaintiff was sat in a plastic chair still "cuffed" behind his back, and defendant Kendrick then punched plaintiff in the right temple with a closed fist causing headache, dizziness, and swelling.
- 19- At time defendant ex-Braenovich got right in plaintiff's face and stated to him "You won't live to make it out of prison to do anything to my family motherfucker" referring to a prior threat the plaintiff made to her earlier in the day.
- 20- Approx 5 min. later R.V. Gordon Sutphin arrived to 0-2 "Multi" to evaluate the plaintiff's injuries.
- 21- After cleaning the plaintiff up, R.V. Sutphin determined that the plaintiff required sutures and needed escorted to Medical.

- 22- No Camcorder was used for any of this up to that point like is protocol in all uses of force. Especially after plaintiff threatened defendant ex-Braenovich's life an hour earlier.
- 23- At this time Corr. Counselor Tim Carroll began to photograph all of plaintiff's injuries and record from that point on.
- 24- Plaintiff was escorted to medical, treated for his injuries by Dr. Subbashy given Motrin for pain and released back to his cell.
- 25- Plaintiff was escorted back to his cell and placed in it without further incident.
- 26- Plaintiff's injuries included: 2 cuts requiring 5 sutures, right eye swelled shut, knot on temple, sore jaw, headache and dizziness for 2 or 3 wks.

Legal Claims

- 27- Plaintiff realleges and incorporates by reference paragraphs 1-26
- 28- The beating violated plaintiff Salvatore Lobbello's rights and constituted cruel and unusual punishment and a due process violation under the eighth and fourteenth Amendments to the United States Constitution.
- 29- The plaintiff has no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured by the conduct of the defendants unless this court grants the declaratory and injunctive relief which plaintiff seeks.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that this court enter judgement granting plaintiff

- 30- A declaration that the acts and omissions described herein violated plaintiff's rights under the Constitution and laws of the United States.
- 31- A preliminary and permanent injunction to order defendant Cpl. Dave Miller to stop assaulting Plaintiff, stop handling plaintiff's food and mail and to generally stay away from plaintiff. (e.g. transferred from plaintiff's unit.)
- 32- Compensatory damages in the amount of \$_____ against each defendant, jointly and severally.
- 33- Punitive damages in the amount of \$_____ against each defendant.
- 34- A jury trial on all issues triable by jury.

35- Plaintiff's costs in this suit.

36- Any additional relief this court deems just, proper and equitable.

February 1, 2011

Salvatore LoBello
Respectfully Submitted

Salvatore LoBello
D.O.C. 34718
MT. OLIVE Correctional Complex
7 Mountainside Way
MT. OLIVE, W.VA 25185